

EIGHTY-NINTH SESSION

In re Gupta (No. 7)
(Application for review)

Judgment No. 2000

The Administrative Tribunal,

Considering the seventh complaint against the World Health Organization (WHO) filed by Mr Shiv Raj Gupta on 4 October 1999 and corrected on 18 October;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. This is an application for review of Judgment 1860, which the Tribunal delivered on 8 July 1999. That judgment upheld - within the limited scope of the Tribunal's power of review in matters concerning an appointment - the lawfulness of the selection process the WHO had used in filling the post of assistant I, at grade ND.5, in its Regional Office for South-East Asia (SEARO) for which the complainant, a staff member of SEARO, had applied but was not appointed.
2. The complainant alleges that the Tribunal erred in holding under 5(d) that the memorandum of the Regional Director, dated 17 June 1994, on staff selection and recruitment procedures, was of a general nature; and that the specific requirements in the vacancy notice for the post at issue prevailed over the general provisions in the memorandum. Furthermore, on the matter regarding the computer skills test held during the selection procedure, he alleges that, contrary to what the Tribunal had implied, the job titles listed in the memorandum did not simply provide examples but constituted an exhaustive list of the specific posts for which the Organization may hold tests during the selection process - and then too only at entry level. Therefore, since the post in question had not been so specified in the memorandum, a test could not be held for it.
3. He claims that the WHO is bound by the procedure established in that memorandum and therefore the Regional Director could not prescribe that a test be taken by serving staff members.
4. According to its case law, the Tribunal will not allow review of a judgment on the grounds of an alleged mistake of law (see Judgment 442 *in re de Villegas* No. 4). The Tribunal, in interpreting the meaning of the memorandum and its legal position vis-à-vis the Organization's decision to hold a test as set out in the vacancy notice and the legality of the test, was pronouncing on a matter of law. Therefore, its judgment is not subject to review in this respect.
5. The complainant also alleges that the Tribunal erred in holding under 5(e) that the WHO could change the composition of the Selection Committee during the selection process. What the Tribunal said in its judgment was that the complainant's plea that the Administration had breached a rule of general law must fail since it was due to the absence of a titular member that it was found necessary to replace her with an alternate member. Here too the Tribunal was ruling on a question of law and its judgment is not subject to review.
6. The complainant also refers to the argument that he had raised in his rejoinder that the decision of the regional Board of Appeal was flawed because the chairmanship had been changed at the reporting stage. In its surrejoinder the Organization replied that even though the complainant had been informed that the Chairman of the regional Board of Appeal had been appointed only for one year, he did not challenge the composition of the Board at the time.
7. The Tribunal did not rule on that plea. However, failure to rule on a plea - as distinct from failure to rule on a

claim - is not an admissible ground for review (Judgment 442).

8. Lastly, the complainant submits that he has now come to know that two changes were made in the membership of the Ad Hoc Selection Committee and not just one. He does not say when or how this came to his knowledge, nor does he indicate whether it was a fact which, with due diligence, he could have discovered in time for its inclusion in the original proceedings. Likewise, he fails to mention how this fact could have materially affected the decision of the Tribunal.

9. There were in effect two meetings of the Ad Hoc Selection Committee. At the first one, held on 13 September 1996, the Committee decided to hold a test for eligible candidates to evaluate their computer skills. At the second meeting, held on 24 October 1996, the Committee selected a candidate on the basis of the test.

10. The second change in the composition of the Committee, now alleged by the complainant, is that the staff representative who had been present at the first Committee meeting was replaced by another staff representative at the second meeting.

11. WHO Manual paragraph II 3.390 requires that an ad hoc selection committee has to consist of a personnel officer, an official from the unit with the vacancy, an official from outside the concerned unit and a staff representative likewise from another unit. There exists no general rule of law that would prevent an ad hoc selection committee, which effectively had made no selection, from being set up anew to deal with the actual selection itself. Therefore, even if the second change in composition was regarded as a "new" fact which could not reasonably have been discovered in time for inclusion in the original proceedings - which the complainant has not in fact proved - it is of no avail to the complainant. There was no breach of any general rule and there was no failure to observe the Staff Rules and Regulations in the implementation of the selection procedure.

12. The application is clearly devoid of merit and it must be summarily dismissed in accordance with Article 7(2) of the Tribunal's Rules.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 10 May 2000, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2000.

Michel Gentot

Mella Carroll

James K. Hugessen

Catherine Comtet